

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SUSAN PETERSON,

Plaintiff,

Case No. 3:19-cv-00442-ART-WGC

v.

EVERGREEN TRANS, INC.;
BALWINDER SINGH, and DOES I-X,
inclusive.

Defendants.

ORDER

Before the Court are: (1) Plaintiff Susan Peterson's Motions in Limine to exclude certain evidence (ECF No. 52) from the jury trial in this case scheduled to begin on April 17, 2023; and (2) Defendants Evergreen Transport Inc. and Balwinder Singh's Motion for Sanctions (ECF No. 53) which also seeks to exclude certain evidence. The Court grants and denies Ms. Peterson's Motions in Limine as set forth below, and the Court denies Defendants' Motion for Sanctions.

I. MOTIONS IN LIMINE

A. COLLATERAL SOURCE RULE

The parties dispute whether Defendants can introduce evidence of insurance and Medicare billing rates generally in order to establish that the amounts of Plaintiff's medical bills were unreasonable. Plaintiff argues that Defendants should be prohibited from entering into evidence the expert opinion of Defendants' expert, Dr. Olson, insofar as his opinions on the reasonableness of Plaintiff's medical bills "are a result of applying Medicare rates, insurance rates and CPT codes that reduce Ms. Peterson's actual medical bills to amounts that Medicare pays to medical providers." (ECF No. 52.) Plaintiff argues that

1 introduction of this evidence would violate the collateral source rule as well as
 2 “mislead the jury into thinking that her medical expenses are being paid for by
 3 Medicare[.]” (*Id.*) Defendants argue that they do not seek to introduce collateral
 4 source evidence relating to any payments or medical provider discounts actually
 5 given to Plaintiff, but rather seek to introduce evidence of insurance and Medicare
 6 billing rates generally in order to establish that the amounts of Plaintiff’s medical
 7 bills were unreasonable, which would not be barred under the collateral source
 8 rule.

9 The collateral source rule provides that if an injured party received some
 10 compensation for his injuries from a source wholly independent of the tortfeasor,
 11 such payment should not be deducted from the damages which the plaintiff
 12 would otherwise collect from the tortfeasor. *Proctor v. Castelletti*, 112 Nev. 88, 90,
 13 911 P.2d 853, 854 (1996). Federal courts apply state law in matters involving the
 14 collateral source rule. *In re Air Crash Disaster Near Cerritos, Cal., On Aug. 31,*
 15 1986, 982 F.2d 1271, 1277 (9th Cir. 1992); *see also Feldman v. Allstate Ins. Co.*,
 16 322 F.3d 660, 666 (9th Cir. 2003) (“Most evidentiary rules are procedural in
 17 nature, and the Federal Rules of Evidence ordinarily govern in diversity cases.
 18 However, the Federal Rules do not supplant all state law evidentiary provisions
 19 with federal ones. Rather, state evidence rules that are intimately bound up with
 20 the state’s substantive decision making must be given full effect by federal courts
 21 sitting in diversity.”) (internal quotations omitted).

22 In *Tri-Cnty. Equip. & Leasing v. Klinke*, 128 Nev. 352 (2012), the Supreme
 23 Court of Nevada stated in dicta and in a concurrence that evidence of medical
 24 provider discounts, i.e. reductions in medical bills that an insurer of the injured
 25 party obtains from the medical provider, fall within the ambit of the collateral
 26 source rule and should be excluded. *Id.* at 357 n.6, 360. The Court stated,
 27 “The focal point of the collateral source rule is not whether an injured party has
 28 ‘incurred’ certain medical expenses. Rather, it is whether a tort victim has

1 received benefits from a collateral source that cannot be used to reduce the
2 amount of damages owed by a tortfeasor. In general, the medical provider and
3 the third-party insurer paying the medical costs on behalf of the insured tort
4 victim negotiate the write-downs. The reduced amounts are as much of a benefit
5 for which a plaintiff paid consideration in the form of insurance premiums as are
6 the actual cash payments made by his health insurance carrier to the health care
7 providers. The write-downs constitute compensation or indemnity received by a
8 tort victim from a source collateral to the tortfeasor. As a result, evidence of write-
9 downs creates the same risk of prejudice that the collateral source rule is meant
10 to combat.” *Id.* at 360 (internal quotations omitted); *see Alexander v. Wal-Mart*
11 *Stores, Inc.*, 2013 WL 427132, at *4 (D. Nev. Feb. 1, 2013) (citing *Tri-Cnty. Equip*
12 *& Leasing*).

13 The evidence that Defendants seek to present does not fall squarely within
14 the collateral source rule, since Defendants do not seek to introduce evidence
15 regarding any medical provider discounts given to Plaintiff specifically, but rather
16 evidence of write-downs generally given for certain procedures. Nonetheless, for
17 the reasons set forth in *Tri-Cnty. Equip & Leasing*, the Court finds that this
18 evidence should also be excluded. Plaintiff’s Motion in Limine is granted.
19 Defendants and their experts may not allude to insurance or Medicare billing
20 rates or use them in their calculations, though Defendants remain free to contest
21 the reasonableness of the billed amounts by other means.

22 **B. REPORTS OF DR. OLSON**

23 Plaintiff argues that Defendants’ expert, Dr. Cash, should not be permitted
24 to reference, comment on, or utilize the reports prepared by Defendants’ previous
25 expert, Dr. Olson. Dr. Olson withdrew from his practice during the litigation and
26 Defendants submitted an Emergency Motion to Substitute Defendants’ Expert,
27 which the Court granted. (ECF Nos. 38, 41.) Defendants appear to concede that
28 Dr. Olson’s reports are not admissible at trial, however Defendants argue that

1 their substitute expert, Dr. Cash, may properly rely on information in the reports
 2 created by Dr. Olson. The Court agrees that under Fed. R. Evid. 703, a report of
 3 another doctor is properly considerable by an expert doctor since doctors would
 4 reasonably rely on such reports when forming opinions. Plaintiff's Motion in
 5 Limine to prevent Dr. Cash from relying on the reports prepared by Dr. Olson is
 6 denied. However, as explained above, Defendants are not permitted to refer to or
 7 utilize insurance or Medicare billing rates to establish the reasonableness of the
 8 rates billed to Ms. Peterson, so Dr. Cash is not permitted to refer to or utilize any
 9 portion of Dr. Olson's reports which are based on such billing rates.

C. INSURANCE

11 Plaintiff and Defendants agree that evidence of or references to any liability
 12 insurance held by Plaintiff is improper. As such, the Court orders that the parties
 13 shall not present any evidence or ask any questions regarding any insurance
 14 coverage potentially held by Plaintiff, including regarding actions by any
 15 insurance company for coverage potentially held by Plaintiff. Plaintiff's Motion in
 16 Limine is granted.

D. CHARACTERIZATION OF THE CASE

18 Plaintiff argues that the Court should enter an order preventing Defendants
 19 from referring to this case as "attorney-driven litigation" or as a "medical buildup"
 20 case and generally prohibiting Defendants from arguing that "Plaintiff's attorneys
 21 directed Plaintiff's medical care, and that Plaintiff's physicians performed
 22 unnecessary, unwarranted, and non-indicated medical procedures." Defendants
 23 have agreed not to use the terms "attorney-driven," "medical buildup," and
 24 "conspiracy," but assert that they remain entitled to impeach Plaintiff's witnesses
 25 by introducing evidence of partiality, which, in this case, involves evidence
 26 relating to the frequency in which Plaintiff's doctors involve themselves in
 27 litigation and whether Plaintiff was referred to her doctors by her attorneys.

28 Relevant evidence is admissible if it is not barred by a specific evidentiary

rule and if it is not unduly prejudicial relative to its probative value. The credibility of witnesses is generally relevant, and evidence of bias or partiality is generally admissible to demonstrate or impeach credibility. Evidence that a witness has a medical lien or was referred to by plaintiff's counsel is relevant to show bias and challenge credibility. *See Ruiz v. Walmart Inc.*, 2021 WL 5759043, at *3–4 (C.D. Cal. Oct. 28, 2021) (“Evidence that a testifying medical provider holds a lien is relevant to show that provider may have an interest in inflating bills or testifying in favor of Plaintiff to ensure payment. Additionally, the existence of a regular referral relationship between a plaintiff's lawyer and a testifying expert could impact that expert's credibility.”) (internal quotations omitted); *Alexander v. Wal-Mart Stores, Inc.*, 2013 WL 427132, at *6 (D. Nev. Feb. 1, 2013) (denying similar motion in limine). However, where there was no evidence of a referral relationship that predated the plaintiff's referral or a medical lien, courts have prohibited introduction of this evidence. *E.g., Dillon Cullinan v. City of Los Angeles*, 2022 WL 18216097, at *1 (C.D. Cal. July 27, 2022).

Defendants have already agreed not to use certain terms which may be unduly prejudicial. The parties appear to contest, however, whether there is any evidence that Ms. Peterson's witnesses had a preexisting referral relationship or treat on medical liens. (*Compare* ECF No. 52 at 6 (arguing that Ms. Peterson's treatment was medically necessary), *with* ECF No. 54 at 5 (“Plaintiff sought medical attention from doctors who enjoy referral relationships and treat on liens.”).) At this time the Court will not issue a general prohibition preventing Defendants from examining Plaintiff's witnesses regarding their referral relationships and involvement in litigation as well as whether there was a medical lien. Nonetheless, the Court will entertain and may grant specific objections relating to these topics during trial. Furthermore, if there is no evidence of a preexisting referral relationship or medical lien, Defendants will not be permitted to refer to referral relationships or medical liens or imply that they may have

1 existed in this case. Plaintiff's Motion in Limine is granted to the extent of
2 Defendants' agreement not to use certain terms and denied in all other aspects.

3 **E. DEFENDANTS' FINANCIAL CONDITION**

4 Plaintiff argues that Defendants should be prevented from referencing their
5 financial condition as it relates to their ability to pay for Plaintiff's damages,
6 including references to the existence or non-existence of insurance which would
7 cover the judgment. Defendants agree and further request that Plaintiff be
8 prohibited from referencing her financial condition as well. The Court finds that
9 the financial condition of either party is not relevant to this matter. The Court
10 grants Plaintiff's Motion in Limine and further orders that Plaintiff shall not
11 reference her financial condition during trial.

12 **F. PRIOR INJURIES**

13 Plaintiff argues that "all evidence regarding prior unrelated injuries or
14 treatment should be excluded[,]" including evidence relating to a prior wrist injury
15 and a gallbladder surgery. Defendants agree not to reference the wrist injury or
16 gallbladder surgery but contend that evidence of prior spinal pain and
17 degeneration as well as psychological issues are relevant to this case.

18 Evidence of prior injuries or preexisting conditions is relevant to the issue
19 of whether medical expenses were caused by the injury at issue or stem from the
20 prior injuries or preexisting conditions, provided that the defendant presents
21 evidence of a causal connection between the prior injuries or conditions and the
22 injury at issue. *Gresham v. Petro Stopping Centers, LP*, 2011 WL 1748569, at *4
23 (D. Nev. Apr. 25, 2011) (explaining the relevance of past injuries and conditions
24 and declining to issue a ruling in limine on whether to exclude prior injury
25 evidence because there was not enough context for the court to determine
26 whether or not the prior injury evidence was related to the injury at issue); *see also FGA, Inc. v. Giglio*, 128 Nev. 271, 283 (2012) ("A prior injury or preexisting
27 condition may be relevant to the issues of causation and damages in a personal
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1 injury action. In order for evidence of a prior injury or preexisting condition to be
2 admissible, a defendant must present by competent evidence a causal connection
3 between the prior injury and the injury at issue.”) (internal citations omitted).

4 The Court will grant Plaintiff’s Motion in Limine to the extent of Defendants’
5 agreements and as to psychological conditions, but will not enter an order at this
6 stage generally prohibiting Defendants from inquiring into spinal conditions that
7 predate the injury and which may have influenced Plaintiff’s conditions and
8 course of treatment after the accident. Defendants have not made a *prima facie*
9 showing of a causal connection between any psychological condition and the
10 injuries at issue, nor is such a connection obvious or natural, such as the
11 connection a potential prior spinal injury has to a claimed spinal injury. At
12 present, the Court lacks sufficient information concerning the prior spinal
13 conditions to evaluate their relationships to the injuries at issue. The Court will
14 hear evidence at calendar call on the causal relationships of the alleged prior
15 spinal injuries at issue before determining its admissibility. Defendants remain
16 obligated to show that all evidence is relevant and to support their evidence with
17 proper foundation.

18 **II. MOTION FOR SANCTIONS**

19 Defendants seek an order of sanctions excluding evidence of certain
20 medical care received by Plaintiff from April 15, 2021 to August 30, 2022,
21 allegedly proffered by Plaintiff after the discovery period closed on April 15, 2021.
22 (ECF No. 53.) Defendants also state that Plaintiff failed to timely disclose a
23 computation of damages for future medical expenses, past wage loss, future loss
24 of wages and earning capacity, past and future loss of household services, past
25 and future loss of consortium claims. Plaintiff responds that this care is simply
26 the continuation of the care that she was receiving before the discovery period
27 closed, which Plaintiff has timely disclosed and supplemented throughout this
28 case, and that there is no prejudice to Defendants by the timing of this disclosure

1 since it is Defendants' position that all the care she received after June 11, 2017
2 was not related to the subject accident. (ECF No. 56.)

3 Defendants' Motion for Sanctions was filed on September 23, 2022, when
4 this case was set for trial beginning on November 1, 2022. At that time, the
5 disclosure of Plaintiff's supplemental information, which Plaintiff provided on
6 September 6, 2022, was 56 days before trial. However, after the filing of
7 Defendants' Motion but before trial, the trial date was rescheduled to April 17,
8 2023, due to a scheduling conflict with this Court's criminal docket. (ECF No.
9 59.) This rescheduling gave Defendants an additional 167 days to evaluate this
10 evidence. For this reason, and because the Court agrees with Plaintiff that
11 Defendants were on notice that Plaintiff's care would be continuing, the Court
12 finds that Plaintiff's submission of the additional evidence was harmless and
13 substantially justified. Defendants' Motion for Sanctions is denied.

14 However, if Plaintiff has not yet provided a calculation of damages as
15 required by Fed. R. Civ. P. 26(a)(1)(A)(iii), Plaintiff is ordered to do so as soon as
16 practicable.

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It is so ordered.

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DATED THIS 13th day of February 2023.

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ANNE R. TRAUM
UNITED STATES DISTRICT JUDGE

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